



Attorney Docket No. 8350.0862-00

In re Application of:

Brian D. HOFF

Application No.: 10/067,204

Filed: February 7, 2002

For: TENSION ADJUSTMENT MECHANISM
FOR A WORK MACHINE

Group Art Unit: 3671

Examiner: R. Stormer

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Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

RESPONSE TO ELECTION OF SPECIES REQUIREMENT

In an election of species requirement dated April 22, 2003, the Examiner required election under 35 U.S.C. § 121 between:

Group I: A method of operating a track-type machine and a work machine in which the drawbar load is used to determine the force on the idler wheel;

Group II: A method of operating a track-type machine and a work machine in which the sensed pressure of the fluid used to operate the drive wheel is used to determine the force applied to the idler wheel;

Group III: A method of operating a track-type machine and a work machine in which the position of the idler is sensed in relation to a recoil curve; and

Group IV: A method of operating a track-type machine and a work machine in which the direction of the drive is used to determine the force on the idler wheel.

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Applicant provisionally elects, with travers, to prosecute Group II, claims 1, 3, 6-10, 12, and 14-16, allegedly drawn to a method of operating a track-type machine and a work machine in which the sensed pressure of the fluid used to operate the drive wheel is used to determine the force applied to the idler wheel. At least claims 1, 8-10, 15, and 16 are generic.

Further, Applicant submits that the election of species requirement is improper because the alleged species are not mutually exclusive. As you know, in order to properly restrict claims to different species, the claims must be mutually exclusive. M.P.E.P. § 806.04(f). Indeed, according to M.P.E.P. § 806.04(f), claims may be restricted to different species only when:

one claim recites limitations which under the disclosure are found in a first species but not in a second, while a second claim recites limitations disclosed only for the second species and not the first.

In the present application, the groups of alleged species identified by the Examiner are not mutually exclusive. Instead, as described throughout the disclosure and illustrated, for example, in FIG. 5, a method of operating a track-type machine may include determining the force to apply to an idler wheel based on a direction of a drive wheel, a sensed pressure of fluid used to operate the drive wheel, and a position of the idler. Indeed, such a method is recited in claim 16. Moreover, other claims also recite combinations including two or more of the alleged species of Groups I-IV.

Furthermore, regarding the alleged species of Group I, the drawbar load is proportional to the pressure of fluid used to operate the drive wheel, as described at, for example, paragraph 41 of the disclosure. Thus, one way to determine drawbar load is to sense the pressure of fluid used to operate the drive wheel. Since drawbar load may

be determined in other ways, the alleged species of Group II is a subset of the alleged species of Group I. Therefore, the alleged species identified in Groups I-IV are not mutually exclusive of one another, as required by M.P.E.P. § 806.04(f).

Additionally, the election of species requirement contains numerous characterizations of the claims with which Applicant does not necessarily agree. Unless expressly noted otherwise, Applicant declines to subscribe to any statement or characterization in the election of species requirement.


Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: May 22, 2003

By: _____


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